IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 22 OF 2005

SHRI EVARISTO R.SIQUEIRA AND ANR., ...Appellants

Versus

THE MORMUGAO MUNICIPAL COUNCIL THROUGH ITS CHIEF OFFICER AND ANR., ...Respondents

Mr. J. P.Mulgaokar, advocate for the appellants. Mr. S. D. Padiyar, advocate for respondent no.1.

Coram:- R. M. LODHA, J.

Date:- 31st August, 2005

P.C.

Heard Mr. J. P. Mulgaokar, the learned counsel for the appellants. I perused the order dated 18th March, 2005 passed by the Civil Judge, Senior Division at Vasco da Gama, Goa.

The trial Court on the basis of the available material found that the plaintiffs have not been able to make out a prima facie case. In paragraphs 16, 17 and 18 the trial Court considered this aspect and then in the light of the case set up by the defendants, it held that the plaintiffs have failed to show any case prima face. The trial court found that the plaintiffs failed to show that their protected rights in the suit plot are infringed or easementary rights are trampled upon. The trial Court also found that the construction of toilet by the defendants would not create any health hazard as apprehended by the plaintiffs.

In paragraph 22 of the impugned Order the trial Court held that the balance of convenience and irreparable loss were also in favour of the defendants. It was found by the trial Court that the defendants have shown that they have demolished the existing structure and in that place they proposed to construct a toilet with modern facility costing about Rs.6,00,000/- under the agreement with Sulabh International. The

defendants have already paid 80% of the contractual amount o Sulabh International. There was no dispute before the trial Court that about 200 people are using the old toilet and construction of the new toilet would benefit those people.

Taking all these facts and circumstances into consideration, I am satisfied that no case for interference in the impugned Order is made out. The discretion exercised by the trial Court does not suffer from any illegality or material irregularity or perversity.

The Appeal From Order is dismissed in limnine.

R. M. LODHA, J.